IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CONTEMPT PETITION NO.70 OF 2005

IN

NOTICE OF MOTION NO.515 OF 2005

IN

SUIT NO.457 OF 2005

...

Minaxi Kishor Mehta ...Petitioner

v/s.

Jayant Dwarkadas Sanghvi

and ors. ...Respondents

...

Mr.Rohit Kapadia, Sr.Counsel with Mr.Ravi Kadam Advocate General, Mr.T.N.Subramanium, Mr.Naushad Engineer and Mr.Birendra Saraf i/b Zohair & Co. for the Petitioner.

Mr.S.H.Doctor, Sr.Counsel with Mr.D.D. Madon, Sr.Counsel, Mr.S.S.Purohit, Mr.Manish Doshi and Mr.R.P.Babiani i/b Vimadalal & Co. for Respondents

Nos. 1 & 2.

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CORAM: D.K.DESHMUKH, J.

DATED: 3RD MAY,2007

P.C.:

1. By this petition the Petitioner alleges that the Respondents Nos. 1 & 2 have willfully disobeyed the order dated 18-2-2005 passed by this court in Notice of Motion No.515 of 2005 in two ways, namely (i) by filing false affidavit dated 10th March, 2005 and (ii) by willfully committing breach of the order and transferring the assets after the order was made.

2. The facts that are relevant and material are as follows:-

. The property in relation to which disobedience of the order is alleged is Plot No.F-135, in Ambad Industrial Estate, MIDC, Nashik admeasuring 4542.00 sq.meters. Admittedly this plot of land was acquired by Dwarkadas Jivandas Sanghvi from the Maharashtra

Industrial Development Corporation. He constructed a factory building where Pens in the name of M/s.Sanghvi Tips were manufactured. The said Dwarkadas was the sole proprietor of the concern M/s.Sanghvi Tips. On 18-3-2002 the said Dwarkadas expired leaving behind him his widow, four sons and a daughter. The widow of Dwarkadas by name Vimla also expired on 28-12-2003. One of the sons of Dwarkadas by name Jayant, who is Respondent No.1 in the present petition along with the other son by name Balkishen who is Respondent No.3 in the present petition filed Suit No.457 of 2005 for administration of the estate of both the parents. Notice of Motion No.515 of 2005 was moved by the Plaintiffs namely Respondents Nos. 1 & 3 for urgent interim orders. After hearing the parties the court passed ad-interim order dated 18-2-2005. The order reads as under:-

> 1. Heard Learned Counsel for the parties. By consent, following order is passed:
>
> "Without prejudice to the rights and contentions of the parties regarding the ownership of the property and regarding the rights, if any, which they claim under the

> alleged will, all the appearing parties shall file an affidavit disclosing the assets of the deceased Dwarkadas Sanghvi and his wife Vimalaben Sanghavi, so far as each of them know of their assets. It is further ordered that none of the parties shall dispose of or alienate the said assets till further orders. Affidavit to be filed within a period of two weeks."

3. Perusal of the above quoted order shows that the parties to the suit were under an obligation to file affidavit disclosing the assets of the deceased Dwarkadas, which are within their knowledge. In other words, if any of the parties to the suit is aware that property is the assets of the deceased, then that party was under an obligation to file an affidavit disclosing that asset. The Court also restrained by the same order the parties from disposing or alienating the assets of the deceased Dwarkadas.

4. On 10-3-2005, the Respondent No.1 who was one of the Plaintiffs in the suit filed an affidavit pursuant to the order of the court dated 18-2-2005

disclosing the assets of both the parents. The Respondent No.1 did not disclose that Dwarkadas was the owner of the suit property. This contempt petition was filed in the month of September, 2005 alleging that at the time of death of Dwarkadas he was the owner of the suit property. The Respondent No.1 was fully aware of that, still he did not disclose this property in his affidavit dated 10-3-2005. It is also alleged that in breach of the injunction order passed by the court dated 18-2-2005 the Respondent No.1 by misrepresenting the facts to the MIDC and purporting to act as an attorney of the deceased Dwarkadas by agreement dated 29th March, 2005 transferred the property in favour of his wife the Respondent No.2. It is alleged that the Respondent No.2 further transferred the property in favour of third party by an agreement dated 1st April, 2005. According to the Petitioners, the Respondent No.1 has willfully disobeyed and committed the breach of the order dated 18-2-2005. According to the Petitioners, the Respondent No.2 also aided and abetted the Respondent No.1 in committing the breach of the order. It is alleged that she was also aware of the order dated 18-2-2005. The Respondent No.1 had filed an affidavit in reply at the stage

when the petition was considered by the court for admission. That reply was filed on his own behalf and on behalf of the Respondents No.2. In his reply the Respondent No.1 admitted that the suit property was acquired by Dwarkadas, but he contended that though the suit property was acquired in the name of deceased Dwarkadas, it was always with the Respondent No.1. it was contended by him that all the members of the family including the Petitioner treated the property as the property of the first Respondent. He further contended that during his life time Dwarkadas had expressed his intention to gift this property to Respondent No.2 and for that purpose he had executed irrevocable power of attorney in favour of the Respondent No.1 and in exercise of that power the Respondent No.1 by Gift Deed dated 1st March, 2001 gifted the property to Respondent No.2. Therefore, according to the Respondent No.1, with effect from 1st March, 2001 the deceased ceased to be the owner of the property. According to the Respondent No.1 by order dated 3-2-2005 the MIDC had also granted its consent for transfer of the property in favour of the Respondent No.2 and therefore on the date on which the ad-interim order was made by the court the suit property was not owned by the Respondent No.1 and

therefore the Respondent No.1 has not committed breach of the order either by not disclosing this property as the property of the deceased in his affidavit dated 10-3-2005 or in transferring the property to his wife-Respondent No.2 by agreement dated 29-3-2005. The Court heard the matter on 7th July, 2006 and the court on the same date admitted the petition as against the Respondents Nos. 1 & 2 only and issued show cause notice against the Respondents Nos. 1 & 2. Thus, there has been no show cause notice issued against the Respondent No.3. The petition is also not admitted against him.

5. After being served with the show cause notice, the Respondent No.1 again filed his affidavit in reply. The Respondent No.2, however, has chosen not to file any affidavit in reply.

6. The learned Counsel appearing for the Petitioner submits that it is an admitted position that the property was acquired by Dwarkadas. The defence of the Respondent No.1 that the property was transferred by Dwarkadas in favour of Respondent No.2 by Gift Deed dated 1st March, 2001 cannot be accepted. The Gift Deed itself mentions that the subject matter of

the Gift Deed is immoveable property. Admittedly, the Gift Deed is not registered. Therefore, in law, the title of Dwarkadas in the property will not stand transferred to Respondent No.2 by the alleged Gift Deed dated 1st March, 2001. It is further submitted that in any case the consent of MIDC was necessary for giving effect to any transfer. According to the Respondent No.1, that consent was given by the MIDC by letter dated 3-2-2005. Perusal of that consent letter shows that consent did not have the effect of transferring the property to Respondent No.2. For effecting transfer in favour of Respondent No.2, execution of supplemental agreement on stamp paper was necessary. Admittedly, that agreement was not executed before 18-2-2005. Therefore, on 18-2-2005 when the order was made by the court, the property continued to vest in Dwarkadas and Dwarkadas continued to be the owner of the property and this fact was within the knowledge of the Respondent No.1. On his own admission, it is he who was in charge of the property and therefore he was under a duty to disclose this property as the property of deceased Dwarkadas in his affidavit dated 10-3-2005. The learned Counsel further submits that not only that the Respondent No.1 did not disclose in his affidavit

that this property belongs to the deceased, but he went ahead and signed tri-partie agreement dated 29th March, 2005, as the power of attorney holder of the deceased Dwarkadas without disclosing to MIDC that on 29th March, 2005 Dwarkadas was not living and had expired on 18-3-2002. It was also submitted that the Respondent No.1 concealed the information from MIDC that Dwarkadas had already expired. It is submitted that signature on the tri-partie agreement of the deceased Dwarkadas was forged by the Respondent No.1. It is submitted that the Respondent No.1 has admitted in his affidavit that he had no authority to sign as a power of attorney holder of Dwarkadas after the death of Dwarkadas, and therefore, the tri-partie agreement had no legal efficacy. According to the learned Counsel, thus, by signing the tri-partie agreement the Respondent No.1 made an attempt to transfer the property to his own wife. This is definitely contrary to the order dated 18-2-2005. It is submitted that so far as Respondent No.2 is concerned, she had knowledge of the order and she has aided and abetted and colluded with the Respondent No.1 in transferring the property. It is submitted that as the Respondent No.2 has not filed any affidavit after show cause notice was issued to her,

the allegations against her are uncontroverted, and therefore the learned Counsel submitted that both the Respondents Nos. 1 & 2 are guilty of having committed contempt of this court for which they are liable to be punished.

7. The learned Counsel appearing for the Respondents Nos. 1 & 2 submitted that this property was always considered to be the property of Respondent No.1, though it stood in the name of deceased Dwarkadas. He relied on the averments made in paragraph 5 of his affidavit in reply filed after show cause notice to contend that though the property was in the name of Dwarkadas, it is always the Respondent No.1 who was dealing with the property and looking after the property. All the family members of the Respondent No.1 including the Petitioner also considered the property to be of the Respondent No.1. It is then submitted that the deceased had during his life time expressed his desire to gift the property to the Respondent No.2 and for that purpose had executed irrevocable power of attorney dated 14-6-2000 in favour of the Respondent No.1. Acting on power given by the irrevocable power of attorney the Respondent No.1 by Gift Deed dated 1st March, 2001 gifted the

property to Respondent No.2, therefore, in law also the deceased ceased to be the owner of the property with effect from 1st March, 2001. It is then submitted that for giving effect to the transfer in the record of the MIDC, consent of the MIDC was necessary and that consent was recorded by MIDC by order dated 3-2-2005. Thus, according to the learned Counsel the deceased in any case ceased to be the owner of the property on 3-2-2005 and therefore, it was not necessary to include this property in the affidavit dated 10-3-2005. According to the learned Counsel the execution of tri-partie agreement dated 29-3-2005 was merely a ministerial act and it would not amount to disobedience of the order of the court. An attempt was also made to contend that because of irrevocable power of attorney the Respondent No.1 is entitled to act on that even after the death of Dwarkadas. It was then contended that it is clear from the final order passed in Notice of Motion No.515 of 2005 dated 8th December, 2006 that the suit property has not been mentioned as the property about which there is dispute between the parties, this shows that the family members always treated the suit property as that of the Respondent No.1.

8. From the affidavit filed by the Respondent No.1 it is clear that he admits that this property was owned by Dwarkadas. However, according to him the property was purchased by Dwarkadas at his behest. According to him, it is his company which has spent money for construction of the factory building on the plot. He claims that the proprietary concerns of the deceased imported the machines from Switzerland in 1989-90 and started manufacturing pens in that factory form 1992 and it was always the Respondent No.1 and his company which were looking after the business till it was closed in 1993-94. According to him all the taxes and expenses of the plot were paid by his company. Now all these facts namely the facts that the money for construction of the building was spent by the Respondent No.1 and his company, that payment of property tax and other taxes were made by the company and the Respondent No.1 are within the special knowledge of the Respondent No.1 and because according to him the expenditure was made by his own company, it is obvious that the company must be having documentary record, but no documents have been produced in support of the contention that the Respondent No.1 was in charge of the factory and it is he who was paying the taxes and also incurred

expense for construction of the factory. In the absence of documents, which the Respondent No.1 was capable of producing if they existed the averments made in the affidavit cannot be accepted. So far as the contention of the Respondent No.1 that his father decided to gift the suit property in favour of the wife of the Respondent No.1 is concerned, there is no documentary proof produced. It is contended that the power of attorney was executed by the father Dwarkadas in favour of the Respondent No.1 dated 14-6-2000 so that he could execute Gift Deed of the suit property in favour of his wife. But perusal of the irrevocable power of attorney shows that it in no way refers to the alleged decision of Dwarkadas to gift the property to Respondent No.2. On the contrary, first paragraph of the irrevocable power of attorney states that the irrevocable power of attorney has given " for effecting the terms and conditions of the said deed of settlement for completion of the said transaction and the transfer of the said plot." Thus, the purpose of executing the power of attorney appears to be completion of some deeds of settlement. The power of attorney was executed by the deceased in favour of Respondent No.1. Obviously, therefore, the Respondent No.1 must

be aware of the deeds of settlement which is referred to in the irrevocable power of attorney. But neither in his affidavit he has stated anything in relation to that deed of settlement nor he has produced any document of settlement. In this view of the matter, therefore, the submission of the Respondent No.1 that the irrevocable power of attorney was executed in his favour so that he could gift the property in favour of his wife cannot be accepted. So far as Gift Deed is concerned, it is dated 1st March, 2001. Admittedly, it is unregistered and that Gift Deed itself recites "The Donor/ Transferor hereby gifts, transfers and assigns the immoveable property". Thus, according to Gift Deed what is being gifted or donated is immoveable property. Therefore, without registration of this document under the Registration Act, the title in the property will not pass from the deceased Dwarkadas to Respondent No.2. During the course of argument I asked the learned Counsel appearing for the Respondent as to why the gift deed is not compulsorily registerable. He did not give any reply. But continued to assert that on execution of the Gift deed Dwarkadas ceased to be the owner of the property. As the gift deed itself recites that it is gift of immoveable property, without

registration of the document title in the property would not pass to the Respondent No.2 and Dwarkadas would continue to be the owner. Though the Respondent No.1 claims that transfer of property came about on execution of the Gift Deed dated 1st March, 2001, even according to him consent of MIDC was necessary for giving effect to the transfer and for that purpose he relies on the order dated 3-2-2005 made by the MIDC. Perusal of that order shows that order was made because of a request contained in the letter dated 19-1-2005 from Dwarkadas proprietor of M/s.Sanghvi Tips . Perusal of this order shows that Dwarkadas had written a letter to the MIDC on 19-1-2005 for transfer of the property. Though the Respondent No.1 relies on this order, in his affidavit he states that there is no letter dated 19-1-2005 written by Dwarkadas. Perusal of this order shows that the MIDC has granted consent for transfer of property from Dwarkadas to Respondent No.2 subject to execution of supplemental agreement on stamp paper of which the draft was enclosed with the letter. Therefore, in terms of this order itself, this order does not have the effect of transferring the property from Dwarkadas to Respondent No.2. For effecting the transfer

execution of tri-partie agreement was necessary. Tri-partie agreement, in any case was not executed before 18-2-2005 and therefore, on 18-2-2005 when the ad-interim order was made, Dwarkadas was the owner of the property to the knowledge of the Respondent No.1 and therefore, in order to obey the order he was under a duty to disclose in his affidavit dated 10-3-2005 that this property is owned by Dwarkadas. The conduct of the Respondent No.1 of not disclosing this property in the affidavit, in my opinion, is in clear breach of the order dated 18-2-2005. In my opinion, the Plaintiff at whose behest the ad-interim order was made, was under a duty to disclose the suit property in his affidavit dated 10-3-2005, even though according to him the property stood transferred to Respondent No.2 and that only execution of tri-partie agreement had remained. Had the intention of the Respondent No.1 been to be truthful and honest, he would have disclosed all these facts to the court and claimed that though he is disclosing this property in his affidavit, according to him this property is no more owned by Dwarkadas. He did not do so. The intention, in my opinion, is clear and it was to conceal the information from the court and other parties to the

suit. Now coming to the tri-partie agreement, it shows that it is dated 29-3-2005. The copy of the agreement which is filed with the letter shows that it is signed by Dwarkadas, who had expired on 18-3-2002 and the Respondent No.1 has signed it as a power of attorney holder of the deceased Dwarkadas. According to the Respondent No.1, the agreement did not have signature of Dwarkadas and it was signed by him as a power of attorney holder of the deceased Dwarkadas. Even according to him on the date on which he signed the agreement as the power of attorney holder of Dwarkadas, his father Dwarkadas was no more. So far as the conduct of the Respondent No.1 of signing the tri-partie agreement dated 29-3-2005 is concerned, in paragraph 16 of his affidavit filed at the stage of admission, the Respondent No.1 states thus " I say that the said agreement dated 29th March, 2005 was signed by me in my capacity as Attorney of the deceased Dwarkadas under the belief that since I was holding his irrevocable Power of Attorney in respect of the said Plot I could put my signature for him as his constituted Attorney." In the affidavit filed by the first Respondent after the show cause notice in paragraph 5 the Respondent No.1 states thus" I say

that due to misperception, I genuinely believed that the irrevocable Power of Attorney granted by my father to myself would continue. I say that I have mistakenly understood the meaning of irrevocable to mean that the Power of Attorney would continue even after the death of my father." The statement quoted above makes it clear that even according to the Respondent No.1 he was not authorised to sign tri-partie agreement. According to him he signed it under a mistake. But he does not disclose anywhere as to when he realised that he was not authorised to sign. He also does not disclose as to what steps were taken by him after he realised that he committed a mistake in signing the tri-partie agreement. The record shows that he did nothing. In my opinion, the submission of the Respondent No.1 that he signed the tri-partie agreement under a mistake cannot be accepted. The suit filed by Respondents for administration of the estate of his parents was pending in this court and in that suit ad-interim order referred to above was made and pursuant to that order the Respondent No.1 had filed affidavit of disclosure on 10-3-2005. This was the position existing on 29-3-2005, when the Respondent No.1 signed the tri-parti agreement. In the suit the

Respondent No.1 was represented by lawyer. In this situation, therefore, it is hard to believe that the Respondent No.1 signed the agreement because of any mistake. If the Respondent No.1 had any intention to abide by the order of the court, he would have consulted his lawyer before signing the agreement. The conduct of the Respondent No.1 of signing the tri-partie agreement, in my opinion, is in clear breach of the order passed by the court and that was done deliberately by the Respondent No.1. Therefore, in my opinion, the Respondent No.1 is guilty of having violated the order dated 18-2-2005 on both counts by not disclosing this property in his affidavit dated 10th March, 2005 and by signing the tri-partie agreement for transferring the property.

9. So far as the Respondent No.2 is concerned, there is a clear allegation made in paragraph 3 that she had knowledge of the order and that she aided and abetted the Respondent No.1 in transferring the property. The role of the Respondent No.2 in transfer of property is clear, because she has signed the tri-partie agreement. So far as aspect of knowledge of the order is concerned, the affidavit filed before admission was filed by Respondent No.1

also on behalf of his wife. Allegation that the second Respondent had the knowledge of the order is made in paragraph 3 of the petition. Paragraph 3 of the petition has been replied to in paragraph 9 of the affidavit of Respondent No.1 dated 25th November, 2005. Perusal of that paragraph shows that it is not denied that the Respondent No.2 had knowledge of the order. However, perusal of paragraph 8 of the same affidavit shows that it is denied that the Respondent No.2 had knowledge of the order. In my opinion, however, considering that the Respondent No.2 is wife of the Respondent No.1, the Respondent No.1 was the Plaintiff in the suit, a mere denial of the Respondent No.1 that the Respondent No.2 had any knowledge can not be accepted. What is to be seen is, when the court decided to issue show cause notice to Respondent No.2, affidavit filed on her behalf by Respondent No.1 was before the court and in spite of that affidavit and denial of the Respondent No.2, the court issued show cause notice. Admittedly, after the service of the show cause notice she has not filed any affidavit. Even the Respondent No.1 has not filed reply on her behalf. Therefore, in my opinion, it can be safely concluded that the Respondent No.2 also had knowledge of the order and

despite having knowledge of the order, she helped the Respondent No.1 in transferring the property in her favour. Therefore, she is also guilty of having committed civil contempt of the court.

10. So far as Respondent No.1 is concerned, he has tendered apology. The learned Counsel appearing for the Respondent No.1 submitted that his apology is genuine and should be accepted, specially because according to the learned Counsel the Respondent No.1 is willing to deposit the amount that was received from the third party. In my opinion, however, the apology tendered by the Respondent No.1 cannot be termed as genuine. Had the Respondent No.1 been repenting, immediately on realising that he is not justified in signing the tri-partie agreement, he would have taken steps to bring back the property. Admittedly, no steps have been taken. So far as offer to bring back the money is concerned, the money is received by Respondent No.2 from the third party. But the very fact that the Respondent No.1 is willing to bring back the money shows that the Respondents Nos. 1 & 2 are together. In my opinion, the amount of consideration is merely alleged in the affidavit. No document in support of that has been produced.

The agreement by which transfer is effected does not mention any amount. In my opinion, therefore, offer to bring back the money is an attempt to mislead the court. As observed above, had the Respondent No.1 really remorsful, he would have instituted proceedings to bring back the property. Therefore, I reject the apology tendered by the Respondent No.1.

11. So far as Respondent No.2 is concerned, she has not tendered any written apology, though the learned Counsel appearing for her submitted that she is submitting oral apology. However, there is no explanation why even after being served with show cause notice no reply is filed by her and why apology in writing is not tendered. In my opinion, therefore, the apology tendered by Respondent No.2 also cannot be accepted.

12. So far as aspect of sentence is concerned, so far as Respondent No.2 is concerned, she being a lady and there being possibility of she being involved in this sorry state of affairs because of her husband-Respondent No.1, in my opinion, imposing fine on Respondent No.2 will meet the ends of justice. Respondent No.2 is thus held guilty for having

committed contempt of this court. She is directed to pay fine of Rs.2000/- as also Rs.15,000/- as costs of this petition to the Petitioner.

13. So far as Respondent No.1 is concerned, looking to his conduct throughout, in my opinion he has made every attempt to defeat the order passed by the court, though he admits that he has committed mistake in signing the tri-partie agreement on the basis of power of attorney of a dead person, he has done nothing to bring back the property. In my opinion, imposing jail sentence on the Respondent No.1 would be in the interest of justice. In my opinion, imposing jail sentence on the Respondent No.1 is necessary because the confidence of the people on justice delivery system is to be maintained. The Respondent No.1 is, therefore, sentenced to undergo simple imprisonment for a period of one month. He is directed to pay fine of Rs.2000/-. He is also directed to pay Rs.25,000/- as costs of this petition to the Petitioner.

14. At the request of the learned Counsel for the Respondent No.1, that part of the order sentencing Respondent No.1 to undergo simple imprisonment is

stayed for a period of eight weeks from today, subject to payment of amount of costs and fine within a period of two weeks from today.

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